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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 189 OF 1998

Aslam Afjal Buwa
since deceased through legal heirs
1(a) Smt. Jubedabi Afzal Buwa
1(b) Wahida Aslam Buwa
1(c) Nilofar Aslam Buwa
1(d) Imran Aslam Buwa .. Applicant

V/s

State of Maharashtra .. Respondent

Mr.Gajanan M. Savagave for the applicant.

Mrs.M.M. Deshmukh, A.P.P. for the State.

CORAM : D.G. KARNIK, J.

DATE : 5TH DECEMBER 2007

ORAL JUDGMENT:

1. Heard the learned counsel for the applicant and the learned A.P.P. for the State.

2. The applicant is accused no.1. The applicant and one Bhauso Malgonda Patil were charged for an offence of deception of the complainant by dishonestly inducing him to deliver cash amount of Rs.5,000/- for

getting employment for his son. The applicant along with Patil was tried before the Judicial Magistrate, First Class in Regular Criminal Case No.249/93. By a judgment and order dated 31st July 1995, the learned Magistrate held the applicant as well as the accused no.2 Bhauso Patil guilty of the offence of cheating punishable under section 420 read with 34 of the I.P.C. and directed them to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-. The applicant challenged the said decision by filing Criminal Appeal No.81 of 1995. The co-accused Patil also challenged the said decision by filing Criminal Appeal No.82 of 1995. By a common judgment and order dated 14th July 1998, the IInd Additional Sessions Judge, Kolhapur dismissed both the appeals and confirmed the order of conviction and sentence. Being aggrieved by the said order, the accused no.2 filed Criminal Revision Application NO.174 of 1998 in this Court. By a judgment and order dated 18th June 2007, this Court upheld his conviction but modified the sentence by reducing the sentence of imprisonment to period already undergone and increasing the fine amount of Rs.500/- to 3,500/-. The applicant has filed the present revision application challenging his conviction.

3. During the pendency of the revision application, the applicant died and his heirs have been brought on

record. Learned counsel for the applicant submits that so far as the order of sentence of imprisonment is concerned, the revision stands abated on death of the applicant. However, since there is an order of imposition of fine of Rs.500/-, the heirs who have been brought on record are entitled to challenge the same. In support of his submission, he refers to and relies upon the decisions of the Supreme Court in **Pranab Kumar Mitra v. State of West Bengal, reported in AIR 1959 SC 144** and **State of Kerala v. Narayani Amma Kamala, reported in AIR 1962 SC 1530**. In view of the aforesaid decisions, the revision application is maintainable and is heard on merits.

4. The brief facts of the case are as under:-

. P.W.1 - Gundu Kumbhar is the original complainant. He has three sons. As the complainant was the only earning member in his family, he was in financial strain. He therefore was in search of a job for his son Chandrakant. In May 1993, one Mr.Jobber introduced the complainant to the accused no.1. The accused no.1 told him that there was a post of a telephone operator in Mahatma Gandhi Hospital at Pargaon and assured him that he would arrange the job for his son provided the complainant pays him Rs.15,000/-. Thereafter, the applicant - accused no.1 sent a message

to the complainant to keep the amount ready and should go with him to Pargaon. On 25th May 1993, the complainant and his son along with the accused went to Mahatma Gandhi Hospital at Pargaon. The accused no.1 told the complainant to wait outside the chamber of Dr.Desai and the accused no.1 entered the chamber and was inside for 15-20 minutes. He then came out and informed the complainant that the work has been done and the complainant should pay him Rs.15,000/-. However, the complainant only had Rs.5,000/- with him, which he paid to the accused no.1 and promised to pay the balance. Thereafter, the complainant's son never got the job. The complainant repeatedly pressed the accused for the job. However, both the accused started giving false excuses. The complainant then came to the conclusion that he was deceived and he demanded back Rs.5,000/-. The accused no.1 returned Rs.2,000/- on 14th July 1993 and again returned Rs.2,000/- after 8 days. However, he refused to return the balance Rs.1,000/-. The complainant, therefore, lodged an F.I.R. with Shivaji Nagar Police Station. After investigation, charge-sheet was filed and both the accused were tried. The learned Magistrate, after careful examination of the evidence, came to the conclusion that the prosecution case was proved and accordingly convicted and sentenced them as mentioned earlier.

5. The trial court has believed the prosecution witnesses. P.W.1 - the complainant has deposed that an amount of Rs.5,000/- was paid to the accused no.1 at the instance of the accused no.2. The complainant has also stated on oath regarding their visit to the Mahatma Gandhi Hospital at Pargaon where the amount of Rs.5,000/- was paid. In the cross-examination, the evidence of P.W.1 was not shattered. Though the other witnesses examined turned hostile, the complainant stood by his case and his evidence has been believed by the trial court as well as by the Sessions Court. I see no reason to take a different view than the view taken by the courts below in appreciating the evidence of the complainant and believing him. There is no merit in the revision application, which is hereby dismissed. Rule is discharged.

(D.G. KARNIK, J.)